Comment on Cases

ALIENS: RECENT CALIFORNIA DECISIONS DETERMINING THEIR RIGHTS AS TO REAL PROPERTY—The problem of alien ownership of agricultural lands in the United States is furnishing a striking illustration of the power of economic exigency to force definition of the extent of legal rights. Before the beginning of the present century the entire country was but little concerned with the question, great tracts of unsettled land precluding the now everpresent sense of restraint and competition.[1] The cases arising under state laws alleged to be in conflict with various treaties were in the main content to declare one or two broad principles. Their effect was to establish the rule that in matters relating to ownership of real property by aliens the state might act at will, its regulations being, however, suspended where found to be in conflict with specific treaties.[2] But such cases were relatively infrequent. Their general result was to establish the fact that certain types of regulation were forbidden because generally in conflict with treaties, rather than to define the exact extent and nature of that which was permissible. Now, the passage of alien land laws in many states,[3] together with the development of strong popular desire for their strict enforcement, has resulted in the appearance of a group of cases which tend to block in at least the outline of the state powers in this direction.[4]

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[1] Anti-Chinese legislation and the consequent litigation was of crucial interest to a section of the country only. It was also more industrial than agricultural in its bearings.

[2] 4 Moore, International Law Digest (1906) 33-38; Fairfax v. Hunter (1813) 11 U. S. (7 Cranch) 602, 3 L. Ed. 453; Chirac v. Chirac (1817) 15 U. S. (2 Wheaton) 259, 4 L. Ed. 234; Hauenstein v. Lynham (1879) 100 U. S. 483, 25 L. Ed. 628; De Vaughan v. Hutchinson (1896) 165 U. S. 566, 570, 41 L. Ed. 827, 17 Sup. Ct. Rep. 461; Clarke v. Clarke (1899) 178 U. S. 186, 44 L. Ed. 1028, 20 Sup. Ct. Rep. 873; Blythe v. Hinckley (1900) 180 U. S. 333, 45 L. Ed. 557, 21 Sup. Ct. Rep. 390; Johnson v. Olson (1914) 92 Kan, 819, 142 Pac. 214; Techt v. Hughes (1920) 229 N. Y. 222, 128 N. E. 185; Tanner v. Staeheli (1920) 112 Wash. 344, 192 Pac. 991.

[3] See Alien Land Laws and Alien Rights (1921) House Doc. No. 89, 67th Congress 1st Sess.; Arizona, Session Laws 1921, Ch. 29, p. 25; California, Hennings General Laws, 1920, 59; Delaware, Rev. Code, Ch. 91, §§ 3194-3195a; District of Columbia, Code, Ch. 7, §§ 396-398; Illinois, Stats. Ann., Ch. 6; Indiana, 2 Burns' Stats. 1914, §§ 3943-3944; Kansas Constit.: Bill of Rights, § 17; Kentucky, Stats., Carroll 1915, Ch. 19, Arts. 1, 2 and 3; Minnesota Gen. Stats. 1913, §§ 6696-6700; Missouri, Rev. Stats. 1909, Ch. 5, §§ 748-752; Nebraska, Neb. Rev. Stats. 1913, §§ 6273, 6275, 6276, as amended April 25, 1921; Oklahoma, Constit. Art. 22, §§ 1 and 2; Pennsylvania, Penn. Stats. (West's Digest) § 476 et seq.; Texas, General Laws 1921, Ch. 134, 261; Washington, Constit., Art. 2, § 33, Session Laws 1921, Ch. 50, 156. There are also proposed restrictive amendments to the constitutions of Colorado, Nevada and New Mexico, and the constitutional convention of 1921 for Louisiana adopted such a provision.

[4] The scope of this note is limited to a discussion of the real property rights of aliens as affected by the powers of the several states under the Constitution of the United States. For fuller discussion of the problems in international law involved see J. H. Boyd, The Treaty-making Power of the United States and Alien Land Laws in States, 6 California Law Review, 279-94; C. C. Hyde, International Law, Vol. I, 352-7.

The Federal district courts have sustained the alien land laws of Washington and California as to their basic prohibition against ownership of agricultural lands, in the first state by aliens who have not declared their intention of becoming citizens of the United States,[5] in the second by those aliens ineligible to citizenship whose right to own such lands is not guaranteed by treaty.[6] The cases involving this proposition have been appealed to the Supreme Court of the United States. Since then three cases assuming the constitutionality of the critical sections and considering subordinate sections of the California law have appeared. Of these the first, *Estate and Guardianship of Tetsubumi Yano,*[7] in the state Supreme Court, holds sections 4 and 5 of the act, designed to prevent Japanese parents from evading the law by purchasing lands for native-born children, unconstitutional as violating the Fourteenth Amendment in its discriminatory denial of privileges to both parent and child. *In re Akado,*[8] the second case in the same court, in denying a petition for habeas corpus, affirms the validity of the distinction made by section 10 of the act, which provides a penalty for conspiracy in attempting to evade the act and omits so to provide in the case of the completed transfer. The Federal District Court, in the third case, *Frick and Satow v. Webb,*[9] upholds that portion of section 3 which forfeits acquisition of stock "in any company, association or corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land," as not in conflict with the treaty with Japan. Similar provisions in the alien land laws of other states make these cases of great importance.[10]

A certain amount of popular surprise was occasioned by the announcement of the decision in the Yano case, in view of the fact that in the minds of many the decision of the Porterfield case established the whole act. The reasoning of the court seems inescapable in its logic, however, no other result being possible under the present California laws as to guardianship.[11] Granting that the Japanese treaty is not in question, and that the classification which is made a basis for distinction as to rights and privileges of guardianship is one made by Congress in the naturalization

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[5] Terrace v. Thompson (1921) 274 Fed. 841.

[6] Porterfield v. Webb (1921) 279 Fed. 114. This case, together with O'Brien and Inouye v. Webb (1921) 279 Fed. 117, declaring that a cropping agreement is not an interest in lands within the act, is discussed in 10 California Law Review, 241.

[7] (May 1, 1922) 63 Cal. Dec. 515.

[8] (May 16, 1922) 63 Cal. Dec. 577, 207 Pac. 245.

[9] San Francisco Recorder, May 24, 1922, U. S. Dist. Ct. N. Dist. So. Div.

[10] For instance, the alien land laws of Arizona, Texas and Washington have provisions relating to guardianship and penal sections whose effectiveness will be much influenced by the construction and establishment of the validity of corresponding section in the California law. These statutes, and in addition those of Delaware, District of Columbia, Minnesota, Missouri, Nebraska and Oklahoma also attempt to reach ownership of lands by corporations of whose stock varying proportions are in the hands of aliens.

[11] It is suggested that strict enforcement of guardianship rules may be a sufficient deterrent to the use of this means of evading the law: Senator J. M. Inman, The Sacramento Bee, May 26, 1922.

laws, it is pointed out that this is not enough to establish its constitutionality. A classification such that it does not conflict with the equal protection clause of the Fourteenth Amendment must be based on distinctions reasonably justifying differences in legislative treatment in the situation in question.[12] Classifications valid for one purpose may be invalid for other purposes.[13] The alien classed as ineligible to citizenship may for that reason be denied the right to own real property,[14] but it does not follow that he may therefore be denied the right of guardianship of his native-born child and control of its estate, if he is otherwise capable. Distinctions in this field are properly based on other grounds than political status. In this regard the decision is entirely consistent with an adoption of the rule of the Porterfield and Terrance cases.

The second ground for holding the guardianship sections unconstitutional is that they violate rights of the native-born child, under both the state and federal constitutions. By emphasizing the right of the citizen to be free from unwarranted restrictions, the decision may seem to lend some force to the argument, occasionally advanced, that alien land acts in restricting sales by citizens are for that reason unconstitutional, since the right to dispose of property is an essential element therein.[15] This form of limitation as a result of state control of the acquisition of realty by aliens has long been accepted.[16] It is probably not open to attack where it merely reduces the number of those who will offer to buy by making the property in the hands of certain purchasers subject to escheat. The California act, however, goes further than this in section 10 in penalizing conspiracy to effect a transfer of real property to aliens to whom the act applies. In view of the fact that it has been held that sales to aliens pass good title, subject only to state attack,[17] there may be a basis for questioning the limitation upon the right of the citizen to negotiate in regard to his property prior to the sale. This phase of the problem was not presented in the Akado case, which considered only the reasonableness of the distinction made by section 10 between conspiracy to transfer an interest in property and the completed transfer, which is not penalized.[18]

The third case under the act, Frick and Satow v. Webb, is concerned with the definition of an interest in lands within the act.

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[12] The latest statements of this frequently stated rule are those in Truax v. Corrigan (1921) 42 Sup. Ct. Rep. 131, and Matter of Kotta (1921) 62 Cal. Dec. 315, 200 Pac. 957.

[13] American Sugar Refining Co. v. Louisiana (1900) 179 U. S. 89, 45 L. Ed. 102, 21 Sup. Ct. Rep. 43, compared with Connolly v. Union Sewer Pipe Co. (1902) 184 U. S. 540, 46 L. Ed. 679, 22 Sup. Ct. Rep. 431.

[14] See particularly the discussion in Terrace v. Thompson, supra, n. 5, and also 10 California Law Review, 241 and 31 Yale Law Journal, 299.

[15] (1917) 245 U. S. 60, 62 L. Ed. 149, 38 Sup. Ct. Rep. 16, L. R. A. 1918C 210, Ann. Cas. 1918A 1201.

[16] Supra, n. 2.

[17] Abrams v. State (1907) 45 Wash. 327, 88 Pac. 327, 9 L. R. A. (N. S.) 186, 122 Am. St. Rep. 914, 13 Ann. Cas. 527.

[18] 63 Cal. Dec. 577, 579.

The majority opinion merely assimilates the third section of the act, concerning ownership of stock in agricultural landholding corporations, to the first two sections, applying the ruling of Terrace v. Thompson and Porterfield v. Webb. The concurring opinion briefly discusses the question whether or no such stock represents an interest in agricultural lands such that it may be regarded as unquestionably not in conflict with the treaty with Japan. The corporation concerned was a farm company. The terms of the opinion are such that the rule may be restricted to this specific type of corporation only. It may be that such construction of the section will be necessary in order to save it.

Aliens have always been considered as having an unquestioned right to own personal property within the state,[19] and this right may be read from the first paragraphs of the present Japanese treaty. Corporation stock is personal property, for purposes of transfer at least, in the usual situations.[20] Although dissolution of a corporation gives the stockholder an equitable interest in corporation property,[21] for most purposes this uncrystallized right is disregarded, the corporation and the stockholder being regarded as separate entities. Among the established exceptions to this rule there are, however, two which are pertinent here. In the first place, the distinction between the corporation and the stockholder may be largely abandoned in the case of the "one man" corporation.[22] Then there may be a situation like that of Continental Tyre Co. v. Daimler,[23] where a British wartime statute was held to preclude recovery by a domestic corporation of sums admittedly due it, because of the resulting enrichment of its enemy alien stockholders.

The known tendency to look to the stockholder in the "one man" corporation affords a basis for considering that aliens owning the controlling interests in domestic corporations may be fairly regarded as having acquired that interest knowing that the corporate fiction may be disregarded in such situations, majority stockholders being regarded as actual owners of corporate assets. This is a predictable incident of doing business in the corporate form, not necessarily restricted to the alien only. Restrictions on such ownership may not conflict with treaty rights. By analogy with the Continental Tyre Co. case the section may also be sustained where applicable to ownership of any stock in corporations whose primary

[19] 1 R. C. L. 805, and cases there cited. Although State v. Travelers Ins. Co. (1898) 70 Conn. 590, 40 Atl. 465, 66 Am. St. Rep. 138, is cited for the proposition that a state may debar aliens from holding shares in her corporations, this decision, the only one on the point discoverable, is properly restricted to its application to non-resident aliens in 2 C. J. 1069.

[20] Machen, Modern Law of Corporations, vol. I, § 502, and cases there cited.

[21] Ibid, § 520 et seq.

[22] See 8 California Law Review, 435 and Relley v. Campbell (1901) 134 Cal. 175, 66 Pac. 220; Finnell v. Finnell (1909) 156 Cal. 589, 105 Pac. 740; Kutz v. Obear (1911) 15 Cal. App. 435, 115 Pac. 67; Demming v. Moss (1912) 18 Cal. App. 330, 123 Pac. 204, there cited.

[23] [1916] 2 Appeal Cases 307 (House of Lords).

purpose is the purchase, development and sale of agricultural lands, the prohibition of direct endeavors in this direction having been declared not to conflict with the treaty. But it is submitted that there may be situations where the corporation in question is empowered to acquire such lands, so as to fall within the terms of the act without having such acquisition as a primary purpose, and where the majority control is in the hands of others than aliens ineligible to citizenship, in which situations it may be asserted with reason that application of the act will amount to a taking of property which is personal and not representative of an interest in lands. Here again, therefore, the outline of state power is to be regarded as sketched in merely.

The California law, then, is in the following position. The prohibition against ownership of agricultural lands by aliens ineligible to citizenship has been sustained by the state courts as applied to Japanese aliens. It has not been tested as against those ineligible under the Act of Congress relating to alien neutrals who used non-citizenship to evade draft during the late war.[24] An interest in such lands within the act is represented by stock in a farm colony corporation at least, the rule not being generalized in statement. And the penal section has been sustained in so far as its selection of the attempted rather than the completed transfer is concerned. Only the indirect enforcement of the objects of the act by denying rights of guardianship has been rejected by the courts as unconstitutional. The effect of the latter ruling is to cast doubt upon the similar provisions of other statutes.[25] In all the situations there has been but a beginning of the application of the laws, which will, it is to be hoped, ultimately result in a clarifying of the rights of states, nation, and foreign countries and their citizens.

R. R. L.

BILLS AND NOTES: NEGOTIABILITY OF NOTE SECURED BY SUBSEQUENT MORTGAGE—A valid negotiable note was executed between the immediate parties. Considerable time afterwards but before the note had left the hands of the payee, the payee asked and received security for the note. The security was in the form of an assignment of an interest in an estate consisting of personal and real property. The assignment so given is considered a mortgage under the provisions of the California Civil Code.[1] Subsequently the note and the mortgage were assigned to a purchaser with full knowledge of all the circumstances. By numerous decisions[2] based upon a provision of the California Code of Civil Procedure[3] it has been decided that a mortgage contemporaneously executed with a note,

[24] Draft Act of 1918, 40 Statutes at Large 955.
[25] Supra, n. 10.

[1] Cal. Civ. Code §2924.
[2] National Hardwood Co. v. Sherwood (1913) 165 Cal. 1, 5, 130 Pac. 881; Metropolis Bank v. Bank of Monnier (1915) 169 Cal. 592, 595-6, 147 Pac. 265.
[3] Cal. Code of Civ. Proc. §726.